

Report of the City Solicitor to the meeting of the
Miscellaneous Licences Panel to be held on 18 October
2012 at 10.30am in Committee Room 3

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Subject:

AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT LAND OFF DERRY HILL MENSTON NO VG21BD.

Summary statement:

AN APPLICATION HAS BEEN RECEIVED FROM DR STEPHEN EMMS FOR REGISTRATION OF LAND OFF DERRY HILL, MENSTON. THE COUNCIL AS REGISTRATION AUTHORITY MUST CONSIDER AND DETERMINE THE APPLICATION.

IT IS RECOMMENDED THAT THE APPLICATION BE REJECTED

City Solicitor

**Portfolio: LEADER OF COUNCIL &
STRATEGIC REGENERATION**

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Overview and Scrutiny Area: CORPORATE

1. Summary

- 1.1 The Council has received an application for the registration of land off Derry Hill, Menston
- 1.2 The application is founded upon the use of land for lawful sport and pastimes, as of right, by the inhabitants of the locality or a neighbourhood within a locality for a period of at least 20 years counting back from the date when the application was submitted. A plan identifying the area concerned is attached to this report.
- 1.3 The Council is the Registration Authority responsible for the determination of such applications under the Commons Act 2006.

2. Background

- 2.1 The land is comprised of 4 fields is owned by 5 separate individuals. The land forms part of the site of a proposed residential development for which planning permission has been granted under reference 10/04551/MAF on 28th February 2012. However, the planning history of the land is of no relevance to the determination of the subject village green application.
- 2.2 The application was advertised on site and in the local press inviting representations during a six week period expiring on the 4th November 2011 One objection was received on behalf of all 5 landowners and the proposed developer of the land.

3. Other considerations

- 3.1 A Barrister was appointed by the Registration Authority to act as Inspector in determining the application relating to the site and a Non Statutory Public Inquiry was held on 13th 17th August 2012 to hear evidence from the Applicant and the Objector. His recommendation following the Public Inquiry was that the Council as Registration Authority should reject the application for the reasons set out in the Report. A copy of the Inspector's Report will be made available on a restricted basis (in the interest of sustainability) to members of the Panel. A copy will be available for public inspection at the meeting.
- 3.4 The applicant describes the locality in which the site is situated as lying within the ecclesiastical parish of Menston with Woodhead St John the Divine and has provided a map from the Diocesan Office as evidence in support. This is sufficient in law to constitute a locality.

4. Options

- 4.1 Members may confirm or reject the application for registration. However, full regard must be had of the Inspector's advice and factual reasons must be given if it is decided not to follow the recommendation of the Inspector.

5. Financial and resource appraisal

- 5.1 Financial provision has already been identified for the administrative and legal cost of determining the application.

6. Legal appraisal

- 6.1 The application has been processed in accordance with the regulations laid down by statute.
- 6.2 The applicant is required to show that the land has been used by a significant number of the inhabitants of the locality or a neighbourhood within a locality for lawful sports and pastimes as of right for a period of not less than 20 years.
- 6.3 Whilst evidence has been provided to the Registration Authority and the landowners have lodged an objection, there is a significant legal issue affecting the application. The Inspector concluded after hearing the evidence and legal submissions from the applicant and the objector at the Inquiry that no more than occasional and sporadic had been revealed and this was in no way reflective of use by a significant number of the inhabitants of the chosen locality. This was consistent with the evidence of fairly intensive agricultural use of the land given by the Objectors. Whilst it is possible for recreational rights and agricultural use to co-exist this would be in circumstances where the agricultural use was at a low level e.g. taking of an annual hay crop.
- 6.4 The Council as Registration Authority is able to determine this application on its merits based on the evidence which has been provided by the applicant and objector and paying due regard to the recommendations of the Inspector in his Report received by the Council on 8th October 2012.

7. Other implications

7.1 Equal Rights

- 7.1.1 There are no apparent equal rights implications.

Equality Act 2010 – Section 149 – In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance quality of opportunity between different groups and foster good relations between different groups. It is not considered that any issues with regards thereto are raised in consideration of this application.

7.2 Sustainability implications

- 7.2.1 There are no apparent implications for sustainability.

7.3 Community safety implications

- 7.3.1 There are no apparent community safety implications.

7.4 Human Rights Act

- 7.4.1 The following right is applicable in respect of this application.

Article 6 a procedural right to a fair hearing. An opportunity has been given for objections to be made. The supporting evidence has been produced and human rights implications have been considered in the procedure established. If the decision is to confirm or reject the application reasons should be given.

7.5 **Trade Union**

7.5.1 There are no apparent Trade Union implications.

8. **Not for publication documents**

8.1 None

9. **Recommendations**

9.1 It is recommended that members reject the application to register the land off Derry Hill, Menston as a town or village green for the reasons set out in the Inspectors' Report and Recommendation received by the Council on 8th October 2012

10. **Appendices**

10.1 Plan showing application site.

11. **Background documents**

11.1 Application form relating to land off Derry Hill, Menston including supporting statements, documents and photographs.

11.2 Objection from landowners

